

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

STATE OF KANSAS, et al.,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants-Appellants.

No. 24-3521

**APPELLANTS' NOTICE REGARDING
THE FILING OF A REPLY BRIEF**

This appeal concerns a challenge to a final rule issued by the Centers for Medicare & Medicaid Services (CMS) in 2024 that, among other things, states that recipients of deferred action under the Deferred Action for Childhood Arrivals program are considered “lawfully present in the United States” for certain purposes under the Affordable Care Act (ACA) and consequently may be eligible to obtain health insurance on an ACA exchange and to receive certain federal subsidies. Kansas and 18 other States challenged the rule as unlawful, and the district court issued a preliminary injunction and stay of the effective date of the rule within the 19 plaintiff States. The federal government appealed the district court’s order, and the parties have filed opening and response briefs pursuant to the schedule this Court ordered on December 23, 2024. Pursuant to that schedule, the federal government’s reply brief is due on February 19, 2025.

On February 11, 2025, the federal government filed a consent motion to hold this appeal in abeyance. The government explained that the Department of Health and Human Services' (HHS) and CMS's leadership have indicated that the agency intends to reevaluate the issues presented by the appeal. The Court has not yet acted on the pending abeyance motion.

In light of the pending abeyance motion, to which plaintiffs-appellees consented, as well as HHS's and CMS's ongoing review of the rule, the federal government will not be filing a reply brief today. In the event the Court denies the motion for an abeyance or that the abeyance is subsequently lifted, the federal government respectfully requests that the Court afford the government an adequate period for the Acting Solicitor General, in consultation with current HHS and CMS officials, to determine the appropriate next steps in this appeal.

Respectfully submitted,

MELISSA N. PATTERSON
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/s/ Joshua M. Koppel

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FEBRUARY 2025

CERTIFICATE OF COMPLIANCE

Pursuant to Circuit Rule 28A(h)(2), I certify that this notice has been scanned for viruses, and the motion is virus free.

s/ Joshua M. Koppel

Joshua M. Koppel

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Joshua M. Koppel

Joshua M. Koppel